

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

El Paso, Texas

EL PASO ELECTRIC COMPANY

Employer

and

Case No. 16-RC-10572

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 960

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

By Decision on Review and Order dated June 10, 2004, the Board, citing *Ward Baking Co.*, 139 NLRB 1344, 1350 (1962) and *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972), remanded this case for the limited purpose of determining whether there is a sufficient community of interest between the unit found appropriate in the Decision and Direction of Election and the current bargaining unit employees represented by the Petitioner so as to warrant an election pursuant to *Armour & Co.*, 401 NLRB 1333 (1942) and *The Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).¹ The hearing was reopened before a hearing officer of the Board and the parties filed briefs with me.

As evidenced at the hearing, the parties disagree on whether an *Armour-Globe* or self-determination election is appropriate. The Petitioner argues that a sufficient community of interest exists between the unit found appropriate and the current bargaining unit employees such that a self-determination election should be granted. On the contrary, the Employer argues that

¹ In addition, the Board decided to permit the staff-assistant-customer operations and the two customer resource unit employees to vote under challenge.

there is not a sufficient community of interest and therefore an *Armour-Globe* election is not appropriate.

Based on the record evidence, I conclude that the unit found appropriate and the current bargaining unit employees share the requisite community of interest and direct an *Armour-Globe* election. The factual basis and analysis for these findings follow below.

BACKGROUND

On April 2, 2004, the International Brotherhood of Electrical Workers, Local 960 filed the petition in this matter seeking a self-determination election in a unit of all full-time and regular part-time customer service representatives employed by El Paso Electric Company at the telephone center located at 100 N. Stanton, El Paso, Texas. The Petitioner's proposed unit included customer service representatives I, II, III and customer service representative-clerk-telephone center, and excluded all office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

At a hearing conducted on April 16, 2004, the parties litigated whether, in addition to the petitioned-for employees, the appropriate unit should include (1) a staff assistant-customer operations located at the 100 N. Stanton facility, (2) approximately twenty-seven customer service employees, including two lead personnel, located in outlying offices, (3) two customer resource unit employees, and (4) ten revenue collection employees. In addition, the parties disagreed on whether an *Armour-Globe* election should be conducted.

On May 11, 2004, the undersigned issued a Decision and Direction of Election finding that the appropriate unit must include all full-time and regular part-time customer service representatives I, II, III and customer service-clerk-telephone center employed by the Employer at the telephone center at 100 N. Stanton, El Paso, Texas and the outlying offices including

Chelmont, Fabens and Van Horn, Texas and Anthony, Hatch and Las Cruces, New Mexico excluding the staff assistant-customer operations, the two customer resource unit employees, and the ten revenue collection employees. It was further concluded that an *Armour-Globe* election was inappropriate as the petitioned-for unit did not constitute an appropriate residual unit inasmuch as only a portion of the remaining unrepresented customer service employees were sought by the Petitioner.

On May 19, 2004, the Petitioner filed a timely Request for Review contending that a self-determination election should be conducted. The Petitioner further contended that the 27 customer service representatives located in the outlying offices should be excluded from the appropriate unit. On May 25, 2004, the Employer filed a timely Request for Review contending that the staff-assistant-customer operations, the two customer resource unit employees and the ten revenue collection employees should be included in the appropriate unit.

As set forth above, by Decision on Review and Order dated June 10, 2004, the Board granted the Petitioner's Request for Review solely with respect to the determination that a self-determination or *Armour-Globe* election was inappropriate. The Board remanded this case to determine if there is a sufficient community of interest between the unit found appropriate and the current bargaining unit employees so as to warrant an *Armour-Globe* election.

STATEMENT OF FACTS

Unit found Appropriate:

The unit found appropriate is composed of all full-time and regular part-time customer service representatives, I, II and III, and customer service-clerk-telephone center employed by the Employer at the telephone center located at 100 North Stanton, El Paso Texas and the outlying offices including Chelmont, Fabens, and Van Horn, Texas and Anthony, Hatch and Las

Cruces, New Mexico. Included in this unit are lead personnel located in the outlying offices and home agents who perform duties out of their home.

Customer service representatives are responsible for customer care type activities such as connects, reconnects, disconnects and billing inquiries. The primary difference between customer service representatives I, II and III is pay grade. For customer service personnel located at the telephone center, their customer care duties entail communication via the telephone. The job duties of the representatives located in outlying offices entail more face-to-face customer contact including cashiering. The customer service representative-clerk-telephone center employees are physically located at the telephone center and are responsible for the ongoing maintenance of the department's central files, preparation and distribution of the telephone center's periodic productivity reports, relieving the central telephone operator during absences (i.e. breaks, lunch, time off), balancing, cashiering or cash control, and inbound/outbound correspondence to the customer.

The record revealed that all of the customer care employees perform clerical work in office environments. They generally work in cubicle workstations and have access to the Employer's customer information system or ARC system. With minor variations for individual schedules and outlying office hours of operation, these employees generally work standard daytime schedules or 8:00 a.m. to 5:00 p.m. work schedules. Although there are no swing shifts or overnight shifts, the home agents are on call to handle telephone calls during outages. Additionally, customer service representatives are eligible for overtime pay and subject to call-outs during storm situations. The minimum job requirement for these positions is a high school diploma, but the Employer gives preference to job applicants with prior customer care experience as well as keyboard, copier and fax machine experience. The physical requirements

are minimal only requiring these employees to be able to lift up to ten pounds. The salary ranges for customer service representatives range from N-5 (\$18,748 to \$28,188) to N-9 (\$27,194 to \$40,791). The Employer uses a standard evaluation form to evaluate customer service representatives.

Regarding progression, the Employer considers the customer care jobs as a “job family” where employees start at level one and progress to level three. The logical progression for customer service representative-clerk-telephone center employees is to the customer service representative. Lead personnel located in the outlying offices are generally considered for promotions to supervisory positions within the call center.

As set forth in the original Decision and Direction of Election, the Employer is a highly structured organization composed of numerous departments. The employees in the unit found appropriate are supervised by separate supervisors and managers. Eddie Valdez is the manager of customer operations which consists of the telephone center including the customer service representatives I, II, III and the customer service representative-clerk-telephone center. Liz Carrasco, Jesus Granado and Rosanne Valenzuela are the supervisors in the telephone center and report to Valdez. Judy Kummrow is the manager of the outlying offices which includes the customer service representatives located in those areas. Rose Lowe and John McVaugh are supervisors in the outlying offices and report to Kummrow. Valdez, Kummrow and all of the employees in the unit found appropriate fall under the overall authority and control of Kerri Lore, vice-president of administration. The record revealed that the parties do not have a history of collective bargaining with respect to the unit found appropriate.

Current Bargaining Unit

Unlike in the unit found appropriate, the parties have a history of collective bargaining in the current bargaining unit that dates back to 1944. The existing bargaining unit, as set forth in the parties most recent collective bargaining agreement, effective June 16, 2003 to June 15, 2006, is comprised of approximately 300 employees classified into nine groups. Specifically, the classifications are as follows:

- (1) Power Supply Division Operating Departments: Janitor, Apprentice Operator, Operator, Inside Operator, Senior Operator, Working Supervisor.
- (2) Power Supply Division Maintenance Department: Insulator, Helper, Helper/Apprentice, Apprentice Mechanic, Apprentice Electrician, Apprentice Laboratory Technician, Apprentice Instrumentation Technician, Mechanic, Electrician, Laboratory Technician, Instrumentation Technician, Electronic Specialist, Predictive Maintenance Technician, Working Supervisor, Vibration Specialist Level II, Vibration Specialist Level III, Working Supervisor—Vibration Specialist.
- (3) Transmission and Distribution Division—Distribution Construction, Distribution Operations, Transmission Design and Maintenance: Helper, Helper/Apprentice, Apprentice Lineman, Apprentice Cable Splicer, Apprentice Equipment Operator, Lineman, Cable Splicer, Equipment Operator, Working Supervisor.
- (4) Transmission and Distribution Division Meter Testing/Service: Helper, Helper/Apprentice, Apprentice Meter Technician, Meter Technician, Meter Laboratory Specialist, Service Worker, Inspector-Wiring and Meter, Service Order Worker, Working Supervisor.
- (5) Transmission and Distribution Division Substation and Relay Department: Helper, Helper/Apprentice, Apprentice Electrician, Apprentice Equipment Operator, Apprentice Relay Technician, Equipment Operator, Electrician Relay Technician, Relay Specialist, Working Supervisor.
- (6) Transmission and Distribution Division Communications Department: Helper, Helper/Apprentice, Apprentice Communication Technician, Communication Technician, Working Supervisor.
- (7) Administration Division Garage Section: Janitor, Helper, Tool and Material Handler, Senior Tool and Material Handler, Apprentice Mechanic, Mechanic, Technician, Working Supervisor.
- (8) Treasury Services Warehouse Section: Fuel Handler, Warehouse Helper, Tool and Material Handler, Senior Tool and Material Handler, Material Handler, Senior Material Handler, Material Truck Operator, Working Supervisor, Working Supervisor-Power Supply.
- (9) Miscellaneous: Laborer (temporary), Laborer (after 1 year).

These employees work in various locations throughout Texas (El Paso, Fabens, Van Horn, and Sierra Blanca) and New Mexico (Anthony, Hatch and Las Cruces). They perform outside or fieldwork at the Employer's power plants, substations, warehouses and garages. Their job duties are highly skilled and technical and are physically demanding requiring frequent lifting of 50 pounds of force and occasionally up to 100 pounds. The record revealed that the schedules for these employees vary significantly ranging from daytime shifts, to rotating 24-hour shifts, to a midnight shift, to an evening shift, to a flex shift or a Tuesday through Saturday shift

and almost all are subject to call-out on a moment's notice to maintain the system as needed. These employees are required to wear company-issued uniforms including hard hats and fire-retardant shirts. These employees are primarily responsible for generating power or electricity, constructing power lines, maintaining power lines and maintaining the vehicles used to maintain or construct the power lines.

Although not expressly required, the Employer prefers applicants for these positions to have prior craft experience or completion of an apprenticeship program. The majority of employees in these positions receive craft training and are trained through the Department of Labor Apprenticeship Program.

The compensation for all of these employees has been negotiated by the parties and is set forth in the existing collective bargaining agreements. Depending on classification and time in classification, wages range from approximately \$10.05 per hour for laborer (temporary) to approximately \$33.28 per hour for working supervisor-vibration specialist.

Regarding supervision, the record revealed separate managers and/or supervisors. M. Guaderrama and J. Sanchez are power plant managers and supervise the instrumentation technicians, laboratory technician, power plant technician, power plant mechanic, power plant operator (outside), power plant operator (inside), specialist electronics 1C, technician predictive maintenance (1C, 2C and 3C), apprentice power plant mechanic and insulator. Guaderrama and Sanchez report to H. Puente, vice-president of power generation.

Audie Holmes is the supervisor over fleet maintenance which is the group of employees that takes care of the Employer's vehicles. This includes mechanics, technicians (fleet 1 class, fleet 2nd class-new, fleet 3 C-new), apprentice fleet mechanics, senior material and tool handler, helper-garage, part-time helper-garage, and laborer. These jobs are all located at the Employer's

Santa Fe Center. Under the Employer's organizational structure, Holmes reports to L. Wells, manager of support services, and Wells in turn reports to Kerri Lore, vice-president of administration.

P. Garcia is the manager of materials management and he reports to H. Puente, vice-president of power generation. Reporting to Garcia are Eddie Bob Black, supervisor over the Santa Fe stores, and Cindy Cardona, supervisor stores and inventory control. Included in this material management area are bargaining unit employees consisting of stock handlers, senior stock handlers, tool and material handlers and fuel handlers. These employees are located at the Hawkins warehouse, the Las Cruces warehouse and the power plant warehouses.

Regarding the substation and transmission departments, the record revealed that Darwin Jensen is the manager of substations and transmissions, Mannie Prado is the manager of communications and Ray Marquez is the manager of transmissions and substations. All report to J. Horne, director of transmission substations and special projects, who in turn reports to J. Whitacre, vice-president of transmission and distribution. Bargaining unit employees in this area include communication technicians, lineman high voltage, relay technicians, substation electricians, equipment operators, specialist relay 1st class, specialist relay 2nd class, apprentice relay technician, apprentice substation electrician, helper groundman and helper substation. All of these employees are either located at the Santa Fe Center (substation personnel) or the Copperfield reporting location (transmission employees).

Richard Schwartz is the director of design and delivery and he also reports to J. Whitacre, vice-president of transmission and distribution. Bargaining unit employees in this meter test department who report to Schwartz include meter technician, specialist-meter Lab 1st class,

specialist-meter Lab 3rd class and apprentice-meter technician. These employees are physically located at the Santa Fe Center.

Randy Harlas, manager distribution operations, and Art Garcia, manager of new construction, both report to Whitacre as well. Bargaining unit employees in distribution operations include inspector-wiring and metering, lineman, service worker, apprentice lineman and service order worker. In new construction or distribution construction, bargaining unit employees include cable splicer, lineman, equipment operator, apprentice lineman and helper groundman. The distribution operations group operates out of Copperfield and the distribution construction group operates out of Carnegie. However, the actual jobs are located in several locations throughout the company including Hatch, Las Cruces, Scottsdale, Fabens and Van Horn.

In addition to the classifications specifically enumerated in the collective bargaining agreement, the Petitioner also represents the meter reading/collections group and the facility services group. These two groups of employees were added to the existing bargaining unit in 2003 after the employees voted to be included with the existing bargaining unit employees pursuant to stipulated election agreements and *Armour-Globe* elections in Case Nos. 16-RC-10523 and 16-RC-10525. The Petitioner and Employer are presently negotiating the collective bargaining agreement for these employees.

Similar to the other bargaining unit classifications, the meter reading/collections group and the facility services group have separate supervision. John Robinette is manager of meter reading and collections and the supervisors who report to him are Oscar Corral, D. Duran, and Greg Gonzales. S. Chechia is the supervisor for facility services and he reports to L. Wells,

manager of support services. All fall under the overall authority of Kerri Lore, vice-president of administration.

The Employer maintains a group of dispatchers for the meter reading/collections area located in the Center Building and a group of dispatchers located at the Copperfield facility. The primary function of dispatchers is to receive orders from the customer service personnel and then route it to the appropriate field employee to complete the work. The meter reading dispatchers are included in the existing bargaining unit of employees whereas the dispatchers working out of the Copperfield facility are non-union.

Although the parties are negotiating their terms and conditions, the record revealed that the meter reading/collections area employees, including clerks and dispatchers, are currently covered under the same salary structure as the customer service representatives and subject to the same employee evaluation forms. Presently, in the El Paso area, the meter reading and collection department consists of approximately 22 meter readers, ten collectors and one dispatcher. However, there are additional meter readers and collectors working out of the outlying offices.

Community of Interest

The record revealed evidence of functional integration and interaction between employees in the unit found appropriate and current bargaining unit employees. Joe Garibay, manager of customer information systems, described the service process as a constant flow of work that is initiated by a customer call to the telephone center to request service. The customer service representative takes the customer's order and enters it into the customer information system. A work order is then generated that is routed to the dispatchers who determine the appropriate field employee for completion. According to Garibay, the dispatcher serves as an intermediary between the customer service representatives and the field employees. In instances

of high bill complaints, the customer service representative attempts to resolve the matter over the telephone. If the matter cannot be resolved or the customer questions the meter reading, the customer service representative generates an order called an MTRI or meter investigation which is routed to the meter reading dispatcher, a bargaining unit employee, who then dispatches the job to one of the field meter reading employees, also bargaining unit employees.

Other examples of functional integration and interaction are revealed by Linda Montes, customer service representative II, who testified that she communicates with the meter reading dispatchers and Copperfield dispatchers on a daily basis. She estimated that around 80 to 90 percent of the communication is through the ARC system with the remainder by telephone or the Lotus email system. Montes testified that she and other customer service representatives aid in the training of new meter readers. As new employees are hired, they are sent to the customer service area to observe a customer service representative in an effort to gain a more global view of the process and its impact on the customer. In the last couple of months, Montes has trained two new meter readers on customer service procedures.

Rosalba Vargas, customer service representative at the Employer's outlying office in Chelmont, testified that she communicates with the meter reading dispatchers and Copperfield dispatchers on a daily basis. She estimated that 80 to 90 percent of the communication was through the ARC system and the remaining was through Lotus notes or telephone. As part of her job duties, Vargas is required to fill in for other outlying offices including Van Horn where both the customer service representative and the existing bargaining unit servicemen are located in the same office. She testified that customer service representatives working at Van Horn have regular face-to-face or telephone/radio contact with the bargaining unit servicemen. She described a typical day in the Van Horn office as arriving early to take care of any work orders

that may have been left by the prior representative. She then prints the work order and personally hands it to the servicemen who are in the same building. If a customer comes in to the office after the serviceman has left, Vargas calls the serviceman on the radio with appropriate instructions—i.e. customer has paid or reconnect them. Vargas testified that the customer service representatives at the Fabens office have similar daily interaction with bargaining unit employees via face-to-face contact, telephone and two-way radio communication.

Current bargaining unit employee and meter reading dispatcher Lorraine Martinez testified that in the performance of her duties, she is the contact person for the customer service representatives, the field employees, the meter readers and the collectors. Her basic function is to monitor the ARC system for work orders as they are entered by the customer service representatives. Her duties also include balancing money and checks collected by the field consultants; contacting customers and arranging for meter readers or field consultants to meet them at the meter location; providing customers and employees in associated departments with information on scheduled routes and service order and collection issues; compiling and typing daily, weekly, and monthly reports on various department operations using word processing and spread sheet computer applications; retrieving data related to service orders, collections and energy diversion from work orders and entering it into a database; when appropriate, follow up with customers, either verbally or in writing; making arrangements with customers for meter access on no-access accounts; and reviewing high-low failures. Martinez testified that she spends approximately 30 percent of her time handling telephone inquiries from customer service representatives about various aspects of the work orders. She receives telephone inquiries from customer service representatives located at the telephone center and the outlying offices. In the past six months, Martinez has assisted in the training of approximately six customer service

representatives who spent approximately half of a day observing Martinez to gain an understanding of how dispatch works.

Billy Landeros, wiring inspector and bargaining unit employee, testified that his main duties are to inspect new services and meet with electricians, customer and contractors. However, he also does collections work, reconnects and disconnects meters, installs white medical seals and works with energy diversion. All of his work is generated by customer service representatives and scheduled by dispatchers. He testified that he has direct telephone communication with the customer service representatives regarding customer accounts as often as two or three times a week.

The record revealed evidence of similar benefits between the existing bargaining unit employees and employees in the unit found appropriate. Richard Schwartz, director of distribution design and delivery, testified that the employee benefits for the existing bargaining unit employees and the customer service employees are the same with a possible difference regarding life insurance.

The record revealed evidence of interchange between the bargaining unit employees and the unit found appropriate. Garibay testified that during the last year one bargaining unit employee was assigned to work as a customer service representative while he was on light duty. Linda Montes further testified that in the past three years, two employees from the meter reading group transferred into customer service representative positions and that within the past two years, one customer service employee (Millie Melargo Castro) transferred to an operator position at one of the power plants. Montes recalled another such transfer sometime in the past.

Regarding geographic location of facilities, Schwartz testified that the Rio Grande Power Plant is on the west side of El Paso (half in Texas and half in New Mexico) about five to six

miles from the main Stanton building; the Newman Power Plant is almost at the New Mexico state line about 20 miles from the Stanton building; the Santa Fe Center is in New Mexico; the Hawkins warehouse is about ten miles from downtown El Paso; the Copperfield Center is located across the street from the Hawkins warehouse; the Las Cruces warehouse is in New Mexico about 45 miles from downtown El Paso; and Carnegie is about twelve miles from downtown El Paso.

LEGAL ANALYSIS

The Petitioner argues that the unit found appropriate and the current bargaining unit employees share a sufficient community of interest such that a self-determination election should be granted. The Employer, on the other hand, submits that there is no community of interest between these groups of employees, much less one sufficient to warrant an *Armour-Globe* election.

The Board examines a variety of factors in determining whether employees share a community of interest. *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The factors include, but are not limited to employee skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Alamo Rent-a-Car*, 330 NLRB 897 (2000).

Applying these factors, I find a sufficient community of interest between the unit found appropriate and the current bargaining unit employees so as to permit an *Armour-Globe* election. Here the record discloses that the employees in the unit found appropriate are primarily engaged in customer service or customer care duties. The record revealed a significant similarity between the duties of the customer service representatives, primarily those located in outlying offices, and

the existing bargaining unit employees, particularly the meter reader and collections employees. Customer service representatives are responsible for customer care and interact with customers, via telephone or face-to-face, on a daily basis. Their duties include handling customer requests, inquiries and complaints regarding bills and services and cashiering. They work in an office environment with minimal physical demands. Similarly, the clerks and dispatcher in the meter reader and collections department communicate directly with customers via telephone. Duties for the clerk and dispatcher include answering customers' general inquiries regarding their accounts, balancing money and checks collected by field consultants, promoting efficient, courteous and professional customer service, following up with customers, either verbally or in writing and making arrangements with customers regarding matters such as meter access on no-access accounts. Similar to the customer service representatives, the meter reader/collection group clerk and dispatcher work in an office environment with minimal physical demands.

Regarding terms and conditions of employment, the record again revealed a significant similarity between the employees in the unit found appropriate and the existing bargaining unit employees, again particularly with the meter reader and collections department. Although the parties are negotiating a contract over the meter reader and collections department employees, these employees are presently subject to the same wage structure and other conditions including the use of the same evaluation forms as the employees in the unit found appropriate. With the possible exception of life insurance, the existing bargaining unit employees and the employees in the unit found appropriate receive the same employee benefits.

The record revealed some evidence of employee interchange between the at issue groups with two employees transferring from customer service to power plant positions and two employees transferring from the meter reader department to customer service. The evidence also

revealed that customer service representatives assist in the training of new meter reader employees and similarly the meter reader dispatcher assists in the training of newly-hired customer service representatives. The record further revealed significant interaction between the existing bargaining unit employees and the unit found appropriate. Customer service employees working in the outlying offices (Van Horn and Fabens) have daily face-to-face contact regarding customer accounts with bargaining unit field service employees as they are located in the same facility. These customer service representatives print out work orders and give them directly to the field service employees. After the field service employees leave the office, the customer service representatives communicate orders and instructions (e.g. customer has paid, reconnect) regularly via telephone and two-way radios. Similarly, the evidence revealed additional operational or functional integration between the customer service representatives, both at the telephone center and outlying offices, and the meter reader dispatcher. They communicate regularly via the ARC system, telephone and email as much as 90 percent of the time. The record further revealed overlapping job functions in that the focus of the communication is customer care with each employee attempting to provide the other with or obtain information regarding the customer's work order.

Regarding geographic proximity, the record revealed that the Employer maintains numerous offices in Texas and New Mexico. Many of the existing bargaining unit employees work in power plants, substations, warehouses and garages apart from employees in the unit found appropriate. However, other existing bargaining unit employees work out of the outlying offices (Van Horn, Fabens) along with employees in the unit found appropriate.

Although the record revealed a lack of common bottom line supervision between the employees in the unit found appropriate and the bargaining unit employees, there is common

upper level management. Several of the existing bargaining unit departments and managers in the unit found appropriate all report directly to the vice-president of administration (Lore) including the telephone center manager (Valdez), outlying customer service offices manager (Kummrow), the meter reader and collections department manager (Robinett) and the support services manager (Wells).

Finally, the parties do not have a bargaining unit history in regard to the employees in the unit found appropriate. However, the parties share a long standing relationship regarding the existing bargaining unit which includes two recent *Armour-Globe* type elections in October 2003 regarding the meter readers/collectors and facility services groups.

Based on the overall record, I conclude that the similarity in job functions and duties, similarity in employee benefits, functional integration and interaction, common upper level management and geographic proximity warrant a finding that the employees in the unit found share a sufficient community of interest with the existing bargaining unit employees, in particular the meter reader and collections department, such that an *Armour-Globe* election is warranted. Therefore, I direct an *Armour-Globe* election to determine whether the employees in the unit found appropriate wish to be included in the existing bargaining unit or whether they wish to remain unrepresented.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. As forth in the parties' previous stipulation, I find, that the Employer, El Paso Electric Company, is a public utility incorporated in the State of Texas, where it generates, transmits and distributes electricity. During the preceding twelve months, a representative period, the Employer derived gross revenues in excess of \$1,000,000 and during that same period, purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. The parties stipulated to the Petitioner's labor organization status.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time customer service representatives I, II, III and customer service-clerk-telephone center employed by the Employer at the telephone center at 100 N. Stanton, El Paso, Texas and the outlying offices including Chelmont, Fabens and Van Horn, Texas and Anthony, Hatch and Las Cruces, New Mexico.

EXCLUDED: All office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

7. Pursuant to the Board's remand as set forth in its Decision on Review and Order, the staff-assistant-customer operations and the two customer resource unit employees will be permitted to vote under the Board's challenge procedure.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be included in the existing bargaining unit currently represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 960 or whether they desire to remain unrepresented.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102 on or before **August 2, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST **on August 9, 2004**. The request may **not** be filed by facsimile.

Dated: **July 26, 2004**

/s/ Curtis A. Wells
Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102